

109TH CONGRESS  
2D SESSION

# H. R. 5405

To reduce the burdens of the implementation of section 404 of the Sarbanes-Oxley Act of 2002.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2006

Mr. FEENEY (for himself, Mr. MEEKS of New York, Mr. SESSIONS, Mrs. MILLER of Michigan, Mr. HENSARLING, Mr. JONES of North Carolina, Ms. FOXX, Mr. GARRETT of New Jersey, Mr. STEARNS, Mr. TIAHRT, Mr. WICKER, Mr. ROYCE, Mr. PENCE, and Mr. FLAKE) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To reduce the burdens of the implementation of section 404 of the Sarbanes-Oxley Act of 2002.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Competitive and Open  
5       Markets that Protect and Enhance the Treatment of En-  
6       trepreneurs Act” or the “COMPETE Act”.

1 **SEC. 2. IMPLEMENTATION OF INTERNAL CONTROL RE-**  
2 **PORTING AND ASSESSMENT.**

3 Section 404 of the Sarbanes-Oxley Act of 2002 is  
4 amended—

5 (1) in subsection (a), by striking “The Commis-  
6 sion” and inserting “Subject to subsections (c), (d),  
7 and (e), the Commission”;

8 (2) in subsection (b), by inserting “subject to  
9 subsections (c), (d), and (e),” after “for the issuer  
10 shall”; and

11 (3) by adding at the end the following new sub-  
12 sections:

13 “(c) **SMALLER PUBLIC COMPANY EXEMPTION.**—The  
14 Commission’s rules under subsection (a) shall permit an  
15 issuer to elect voluntarily not to provide the assessment  
16 described in subsection (a)(2) and the attestation thereof  
17 described in subsection (b) if the issuer—

18 “(1) has a total market capitalization for the  
19 relevant reporting period of less than \$700,000,000;

20 “(2) has total product revenue for that report-  
21 ing period of less than \$125,000,000;

22 “(3) the issuer has fewer than 1500 record ben-  
23 efiticial holders;

24 “(4) the issuer has been subject to the require-  
25 ments of sections 13(a) or 15(d) of the Securities

1 Exchange Act of 1934 for a period of less than  
2 twelve calendar months; or

3 “(5) the issuer has not filed, and was not re-  
4 quired to file, an annual report pursuant to section  
5 13(a) or 15(d) of the Securities Exchange Act of  
6 1934.

7 “(d) RANDOM AUDITS.—The Commission’s rules  
8 under this section shall provide that, after the first year  
9 for which an attestation and report is made by a registered  
10 public accounting firm under subsection (b), the assess-  
11 ment by the management of the issuer under subsection  
12 (a)(2) shall be subject to examination, attestation, and re-  
13 port on a schedule determined by a system of random se-  
14 lection, as specified in such rules. The Commission shall  
15 specify in such rules that not less than 10 percent of the  
16 issuers listed on each national securities exchange will an-  
17 nually be subjected to such examination, attestation, and  
18 report. Such random selection system shall be adminis-  
19 tered by the national securities exchange on which the se-  
20 curities of the issuer are listed.

21 “(e) DE MINIMUS STANDARD; ADDITIONAL GUID-  
22 ANCE; INDEPENDENCE.—In implementing the require-  
23 ments of this section, the Commission and the Board—

24 “(1) shall alter the standard for review from a  
25 remote likelihood standard for noting weaknesses

1 under this section to a 5 percent de minimus mate-  
2 rial weakness criteria (based on 5 percent of net  
3 profits);

4 “(2) specific guidelines for measuring the terms  
5 ‘reasonable’, ‘significant’, and ‘sufficient’ in the con-  
6 text of internal control over financial reporting for  
7 issuers, including—

8 “(A) reference to specific examples of the  
9 appropriate application of those terms; and

10 “(B) establishment of a means for timely  
11 response by the Commission or Board, as appli-  
12 cable, to requests by issuers and registered pub-  
13 lic accounting firms for guidance as to the ap-  
14 propriate application of those terms; and

15 “(3) shall modify the rules concerning the inde-  
16 pendence of registered public accounting firms to  
17 perform assessments under subsection (b) to allow  
18 prudent interaction between such firms and internal  
19 consultants.”.

20 **SEC. 3. BRITISH ACCOUNTING SYSTEM STUDY.**

21 The Securities and Exchange Commission and the  
22 Public Company Accounting Oversight Board shall jointly  
23 conduct a study comparing and contrasting the principles-  
24 based Turnbull Guidance under the securities laws of  
25 Great Britain to the implementation of section 404 of the

1 Sarbanes-Oxley Act of 2002. The Commission and the  
2 Board shall submit a report on the results of such study  
3 to the Congress not later than one year after the date of  
4 enactment of this Act.

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